

### REMARKS

Reconsideration and allowance in view of the following remarks are respectfully requested.

Claims 26-33, 40-42 and 44-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,554,839 to Hewett et al. The Applicant respectfully traverses the rejection.

The rejected claims, which include independent claim 26, are directed to a work station for simultaneously performing multiple assays including: (a) a fixed first receiving structure adapted to receive and carry a receptacle holding structure for holding a plurality of receptacles, (b) a fixed second receiving structure adjacent said first receiving structure and adapted to receive and carry a contamination limiting element holding structure, and (c) a substance transfer device positioning structure associated with the first and second receiving structures and constructed and arranged to (i) permit a substance transfer device to be manually positioned with respect to a contamination limiting element holding structure carried by the second receiving structure, and (ii) permit a substance transfer device to be manually moved between said first and second receiving structures and to be manually positioned with respect to receptacle holding structures carried by said first receiving structure.

Hewett '839 does not disclose nor suggest the structure that is claimed. Hewett '839 discloses an automated liquid handling apparatus which includes a rack 14 of pipette tips 30 supported on a reciprocal table 12 that is indexable relative to a pipette head assembly 16. Table 12 also includes wells 34 for holding liquids. The pipette head assembly includes pipette barrel support portion 24 carrying a row of pipette heads whose ends are adapted to receive tips 30. A pipette assembly 16 also includes a manifold 42 in communication with a pump 36 and disposed directly adjacent to the pipette tips to feed liquid either simultaneously or selectively to any one of the wells 34. See col. 3, lines 11-57 and Fig. 1.

The Examiner acknowledges that Hewett differs from claimed invention in that the table on which the pipette tip rack and the receptacle tray are carried moves on bed 10. The Examiner explains that, Hewett's disclosure is analogous to the claimed invention because "both the pipette tip rack and receptacle tray are fixed onto the bed." Office Action at p. 3. However, a structure that is carried by a moveable structure is not fixed; it moves with the moveable structure. The rack 14 and the wells 34 of Hewett '839 move with the reciprocal table 12. It is necessary that they move

because the pipette head assembly 16 moves only vertically. Thus, the rack 14 and the wells 34 are not fixed.

The Examiner further states that "[w]ith respect to the substance transfer device being operated manually, such is considered to be functional language, which does not patentably limit the claims." It should be noted that the substance transfer device is not itself a limitation of the claim. The work station of the present invention includes substance transfer device positioning structure which is constructed and arranged to permit the substance transfer device to be manually positioned with respect to a contamination limiting element holding structure carried by the second receiving structure and to permit a substance transfer advice to be manually moved between the first and second receiving structures and to be manually positioned with respect to a receptacle holding structure carried by the first receiving structure.

This is not simply functional language; it describes and limits the construction and arrangement of the substance transfer device positioning structure. Hewett includes no such structure. As noted, Hewett '839 is an automated (*i.e.*, not manual) device. The pipette head assembly 16 is supported on a vertical frame and is fixed relative to the bed 10. The pipette assembly accesses the pipette rack 14 and the wells 34 by the table 12 moving relative to the frame 11. The examiner contends that "it would have been obvious to one of ordinary skill in the art to have the apparatus of Hewett to operate manually as a 'back up' to its automatic operation in the event of mechanical failure." There is no description anywhere in Hewett '839 of using the apparatus in a manual mode. Furthermore, even if Hewett were somehow manually operable, the pipette head 16 can only be moved in a vertical direction, and the rack 14 and wells 34 would be accessed by the pipette head only by moving the table relative to the fixed pipette head. That is, there is no positioning structure that permits the substance transfer device to be manually positioned with respect to a contamination limiting element holding structure carried by the second receiving structure and to be manually moved between the first and second receiving structures and to be manually positioned with respect to a receptacle holding structure carried by the first receiving structure. The conclusion that Hewett '839 renders the claimed invention obvious is no more than a highly speculative reading of Hewett's disclosure motivated only by a hindsight reconstruction of the claimed invention.

For the foregoing reasons, the rejections of independent claim 26 and claims 27-33, 40-42 and 44-48 depending therefrom are improper and should be withdrawn.

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Response to Office Action dtd June 30, 2004  
Response to Office Action of May 20, 2004

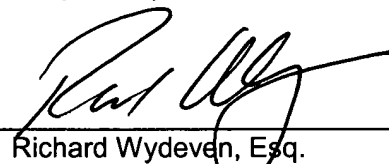
The dependent claims recite additional features and encompass combinations of elements that are patentable over the cited art. In addition, many dependent claims recite features that are independently unique as compared to the cited art, as described in the amendment dated February 6, 2004, filed in response to the Office Action of October 6, 2003.

Applicant gratefully acknowledges the indication of allowable subject matter in claims 38, 39, 43, and 49-52.

All rejections having been addressed, it is respectfully submitted that the present application is now in condition for allowance and a notice to that effect is earnestly requested.

Respectfully submitted,

By



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